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ABSTRACT

This document presents a history of moot court, defined as a mock court where hypothetical cases are tried for the training of law students. The first recorded reference to a moot court was in the year 997, and moots were common at the Inns of Court and Chancery in 14th century England. In 18th century England there were 4 greater Inns of Court and 10 lesser Inns, called the Inns of Chancery; in each of the greater Inns there were about 200 students, and 100 in the lesser Inns. Students learned not only law but history, scripture, music, and dancing, and several historians put the Inns of Court as universities for the study of law on the same footing as Oxford and Cambridge Universities. When formal legal education began in the United States in the late 18th and early 19th centuries, the practices followed were similar to those of the Inns of Court, with lectures by professors followed by moot court exercises. This modified English system continued until the case method was introduced at Harvard Law School in 1870. Because students enjoy them, moot court competitions are still a viable part of the law school curriculum. (Contains 16 endnotes and 10 references.) (CH)

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BRIEF HISTORY

OF

MOOT COURT

BRITAIN AND U.S.

BY

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AND

CHARLES R. KNERR

Prepared for presentation at the Annual Meeting
of the Southwestern Political Science Association
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A "moot" is "an ancient English meeting, especially a representative meeting of the freemen of a shire" and a "hypothetical case argued as an exercise by law students."[1] A "moot court" is defined as a "mock court where hypothetical cases are tried for the training of law students."[2] A "moot point" is one not settled by judicial decisions.[3]

The first recorded reference to a moot is found in the law of *Ethelred the Unready* published in 997.[4] Researching the origin of the jury trial, Pollock and Maitland discovered the Danish law which requires a "moot is to be held every wapentake," and discusses how the twelve eldest "thegns are to go out with the reeve and to swear upon the relic that he puts into their hands that they will accuse no innocent and conceal no guilty man."[5] Pollock seems to believe that while this certainly does look like a jury of accusation, the context makes him doubt whether this is a law that was generally in effect, or that continued in effect intact to present day. However, it is the first recorded use of the word moot in a legal context.

The first written reference of mooting that offers an explanation of the origin of our present day law school moot court surfaces in Robert Pearce's *Guide to the Inns of Court and Chancery.* Pearce indicates that moots were common practice during the time of the Inns of Court and Chancery in England in the late 14th Century. The title page of Pearce's

book reads: "*A Guide to the Inns of Court and Chancery*: with notices of their ancient discipline, rules, orders and customs, readings, *moots*, masques, revels and entertainments. . ." Following is an accurate , detailed description of mooting from the early 1800's:

> **"Another sort of exercise in the Inns of Court were called moots, which from the Latin moveo, to move, agitate, or debate, signified arguing of cases. These moots were usually performed by students of a certain standing, preparatory to their commencing practice. Mootmen, in Lord Coke's time were those who argued readers' cases in house of Chancery, both in terms and grand vacations. Of mootmen, after eight years' study, were chosen Utter Barristers. . ."**[6]

In 1824, Lord Justice Atkin of Gray's Inn, wrote that the practice of mooting was an ancient and essential part of the legal training necessary for call to the Bar.[7] Atkin relates that in 1540, Nicholas Bacon prepared a report for Henry VIII explaining the practices of the Inns of Court. Bacon describes a moot as:

> ***The ordering and fashion of Motying in these Vacations every night after supper. . .the Reader, with two Benchers. . .cometh into the Hall. . .and there most commonly one of the Utter-Barresters propoundeth unto them some doubtful case, the which every of the Benchers in their ancienties argue, and last of all he that moved; this done, the Readers and Benchers sit down on the bench in the end of the Hall, whereof they take their name and on a forme toward the midst of the hall sitteth down two Inner-Barresters, and of the other side of them on the same forme, two Utter-Barresters, and the Inner-Barresters doe in French openly declare unto the Benchers. . . some kind of Action, the one being as it were retained with the Plaintiff in the Action, and the other with the Defendant, after which things done, the Utter-Barresters argue such questions as be disputable within the case. . . and this ended, the Benchers doe likewise declare their opinions, how they think the Law to be in the same questions, and this manner of exercise of Moting, is daily used, during the said Vacations. . .***[8]

Atkin's book contains a fascinating picture of the types of moot cases argued and reveals the illustrious futures some of the student mooters were to have as lawyers.

Sir William Holdsworth writing in 1938 describes these eighteenth century Inns of Court in detail: "...there were four greater Inns of Court - Lincoln's Inn, Gray's Inn, the Inner and the Middle Temple and there were about ten lesser Inns called the Inns of Chancery. In each of the greater Inns there were about two hundred students. In each of the lesser Inns there were at least one hundred. They were peopled by students for the most part of noble birth; and there these students learned not only law, but history, scripture, music and dancing. . ."[9] The two Universities taught only the civil and canon law: the Inns taught English law. These "Universities" of sorts were described as flourishing by the middle of the fifteenth century: admittedly the credibility of this early information is strained as all older records of the Inns of Court are lost. "The general development of collegiate institutions during the fourteenth century, the advance in importance of the common law and its professors, the rise of the class of practising apprentices and the evidence of the congregation of lawyers during Richard II's time in and around the Temple, all go to make this

credible."[10] In addition, several noted historians including Selden, Fortescue and Coke speak of the Inns of Court as Universities for the study of the Law on the same footing as the Universities of Oxford and Cambridge.

The education of aspiring lawyers took a two-fold form: lectures and argument. "During term time cases were argued after dinner, and *moots* were held after supper. . ."[11] The whole life of students at the Inns of Court in the eighteenth century was collegiate at heart and it comes as no surprise that the Inns attracted students of all bents, including those who had no intention of ever becoming lawyers. Holdsworth reviews this century of legal education and calls it decadent. He indicates that what began as sound educational procedure teaching through the arguing of hypothetical cases had dissipated to the point where these exercises became mere form and in some cases an "excuse for extravagant entertainment of the bar by the students."[12] Naturally, the legal education provided at the Inns fell into disrepute and "during the course of the 18th century the readings and moots formerly given by the Inns of Court disappeared."[13] A description of an after-dinner moot at Lincoln's Inn in 1850 from the diary of a student reveals the level of the disintegration:

> ***"the process was then this: all the students dined in Hall during term, and the only attempt on the part of the Inn to test or augment our legal knowledge consisted in certain exercies, which we had to 'keep' as it was called, in due rotation. Though it is so short a time ago, people now-a-days will hardly believe what those exercises were. A slip of paper was delivered to you, written in legible law stationer's hand, which you were to take up to the upper table where the Bencher's sat, and read before them. The contents were generally not intelligible: the slip often began in the middle of a sentence, and by long copying and by no revision the text had become quite corrupt...in old time, I suppose, there used to be a regular 'moot' or debate, before the Benchers, in which the students took part and in which the Benchers judged of their competency."***[14]

There were very few attempts in the eighteenth century to revive the original significance and form of the old readings and moots. It is late in the nineteenth century that we begin to see reforms in this area of education for students intending to enter the legal profession. "When formal legal education began in the United States in the late eighteenth and early nineteenth centuries, it was very similar to that of the Inns of Court."[15] There were lectures by professors followed by moot court exercises. Questions were offered and students argued their legality before the professor, who acted as the judge. This gave the students the practical experience and the opportunity to apply what they had learned from their professors in hypothetical situations. In addition, given the natural bent of students toward competitiveness, these exercises sparked excellent levels of enthusiasm while giving them the opportunity to improve

their oral skills before an audience of their peers. "This modified English system prevailed in the United States law schools until the onset of the case method, first introduced at Harvard Law School in 1870."[16] With the standardization of the case method, moot courts became unnecessary. However, the students enjoyed them immensely and so formed clubs to sponsor competitions. Harvard Law School approved student-run moot court programs in 1910 utilizing a board of third-year students who served as advisors to first-year students. It is virtually impossible to find an American law school that does not presently include moot court competitions as a viable part of the law school curriculum.

Notes

[1]"Moot." *Webster's New Riverside University Dictionary*. 1984 ed.
[2]"Moot Court." Websters.
[3] "Moot Point." Black's Law Dictionary 6th Ed. (1990).
[4] Pollock, Sir Frederick and Frederic William Maitland, eds. Volume 1 *The History of English Law* 140-142 (1959).
[5]Pollock & Maitland, 141.
[6] Crabb, George. *A History of English Law* 564 (1831).
[7] Atkin, Hon. Lord Justice, ed. *The Moot Book of Gray's Inn*. Foreword. (1824)
[8] Atkin Foreword.
[9] Holdsworth, Sir William. Volume II *A History of English Law*. 494 (1938)
[10] Holdsworth, Vol. II, 495.
[11] Holdsworth, Vol II, 507.
[12] Holdsworth, Vol XII, 78.
[13] Holdsworth, Vol XII, 78.
[14] Holdsworth, Vol XII, 80.
[15] Martineau, Robert J. *Journal of Legal Education*. 72 (1989)
[16] Martineau 72.

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